

MT LEGISLATIVE HISTORY

Chapter 500 19 83

Bill H 616 S _____

Original bill & hist. ☒ C

H. Committee on Natural Resources

S. Committee on Judiciary

Hearing Date(s) 2-7 ☒ C

Hearing Date(s) 3-8 ☒ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

Date Out 2-7 ☒ C

3-8 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

RETURNED TO HOUSE WITH AMENDMENTS: 3/10/83

2ND READING: 03/31/83, BE CONCURRED IN AYES: 86; NAYS: 0

3RD READING: 04/01/83, BE CONCURRED IN AYES: 83; NAYS: 1

TRANSMITTED TO GOVERNOR: 04/12/83

SIGNED: 04/14/83, CHAPTER 499

HB 616 -- HOLLIDAY, ABRAMS, SPAETH, ET AL. -- PROVIDING THAT THE OBLIGATION TO MAKE PAYMENTS TO ROYALTY OWNERS IS OF THE ESSENCE IN OIL AND GAS LEASES; REQUIRING OIL AND GAS PRODUCERS TO PAY INTEREST ON ANY UNPAID ROYALTIES; REQUIRING A ROYALTY OWNER TO BRING ANY ACTION SEEKING A REMEDY OR TO COLLECT PAYMENTS IN THE DISTRICT COURT OF THE COUNTY IN WHICH THE WELL IS LOCATED, AND PROVIDING FOR COURT COSTS AND ATTORNEY FEES IN ANY SUCH ACTION; AMENDING

INTRODUCED: 02/02/83

REFERRED TO COMMITTEE ON NATURAL RESOURCES: 02/02/83

HEARING: 2/7/83

REPORT: 02/08/83, DO PASS, AS AMENDED

2ND READING: 02/10/83, DO PASS AYES: 83; NAYS: 2

3RD READING: 02/12/83, DO PASS AYES: 95; NAYS: 3

TRANSMITTED TO SENATE: 02/12/83

REFERRED TO COMMITTEE ON JUDICIARY: 02/12/83

HEARING: 3/8/83

REPORT: 3/8/83, BE CONCURRED IN, AS AMENDED

ON MOTION, 3/10/83, THAT CONSIDERATION OF THE BILL BE PASSED FOR THE DAY. MOTION PASSED UNANIMOUSLY.

2ND READING: 03/11/83, AS AMENDED AYES: 49; NAYS: 0

3RD READING: 03/14/83 AYES: 49; NAYS: 0

RETURNED TO HOUSE WITH AMENDMENTS: 03/14/83

2ND READING: 03/31/83, BE CONCURRED IN AYES: 87; NAYS: 0

3RD READING: 04/01/83, BE CONCURRED IN AYES: 84; NAYS: 0

TRANSMITTED TO GOVERNOR: 04/12/83

SIGNED: 04/14/83, CHAPTER 500

HB 617 -- UNDERDAL, RYAN, SOLBERG, ET AL. -- TO GENERALLY REVISE LAWS RELATING TO THE CROP OR GRAIN LIEN FOR SPRAYING OR DUSTING; AMENDING

INTRODUCED: 02/02/83

REFERRED TO COMMITTEE ON AGRICULTURE, LIVESTOCK, & IRRIGATION: 02/02/83

HEARING: 2/9/83

REPORT: 02/16/83, DO PASS, AS AMENDED

2ND READING: 02/18/83, DO PASS AYES: 92; NAYS: 0

3RD READING: 02/22/83, DO PASS AYES: 98; NAYS: 0

TRANSMITTED TO SENATE: 2/22/83

REFERRED TO COMMITTEE ON JUDICIARY: 3/1/83

HEARING: 3/17/83

REPORT: 03/17/83, BE CONCURRED IN

2ND READING: 03/19/83 AYES: 49; NAYS: 0

3RD READING: 03/22/83 AYES: 49; NAYS: 0

RETURNED TO HOUSE: 3/22/83

TRANSMITTED TO GOVERNOR: 03/28/83

HOUSE BILL NO. 616

INTRODUCED BY HOLLIDAY, ABRAMS, SPAETH,
KEATING, ASAY, HANSON

IN THE HOUSE

February 2, 1983	Introduced and referred to Committee on Natural Resources.
February 8, 1983	Committee recommend bill do pass as amended. Report adopted.
February 9, 1983	Bill printed and placed on members' desks.
February 10, 1983	Second reading, do pass.
February 11, 1983	Considered correctly engrossed.
February 12, 1983	Third reading, passed. Transmitted to Senate.

IN THE SENATE

February 12, 1983	Introduced and referred to Committee on Judiciary.
March 8, 1983	Committee recommend bill be concurrent in as amended. Report adopted.
March 10, 1983	Second reading, pass consideration.
March 11, 1983	Second reading, concurred in as amended.
March 14, 1983	Third reading, concurred in. Ayes, 49; Noes, 0.

IN THE HOUSE

March 14, 1983

Returned to House with
amendments.

March 31, 1983

Second reading, amendments
concurred in.

April 1, 1983

Third reading, amendments
concurred in.

Sent to enrolling.

Reported correctly enrolled.

House BILL NO. 616

INTRODUCED BY

M. Hanson

Necessary become law
Nothing any

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT THE OBLIGATION TO MAKE PAYMENTS TO ROYALTY OWNERS IS OF THE ESSENCE IN OIL AND GAS LEASES; REQUIRING OIL AND GAS PRODUCERS TO PAY INTEREST ON ANY UNPAID ROYALTIES; REQUIRING A ROYALTY OWNER TO BRING ANY ACTION TO CANCEL A LEASE OR COLLECT PAYMENTS IN THE DISTRICT COURT OF THE COUNTY IN WHICH THE WELL IS LOCATED, AND PROVIDING FOR COURT COSTS AND ATTORNEY FEES IN ANY SUCH ACTION; AMENDING SECTION 82-10-102, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~NEW SECTION.~~ Section 1. Obligation to pay royalties -- remedy for breach. (1) The obligation arising under an oil and gas lease to pay oil or gas royalties to the royalty owner or his assignee, to deliver oil or gas to a purchaser to the credit of such royalty owner or his assignee, or to pay a portion of the proceeds of the sale of such oil or gas to the royalty owner or his assignee is of the essence in the lease contract. Breach of such obligation constitutes grounds for the cancellation of such lease in cases in which it is determined by the court that the equities of the case require cancellation.

(2) If the operator under an oil and gas lease fails to pay oil or gas royalties to the royalty owner or his assignee within 90 days after receipt of a signed royalty division order, the unpaid royalties thereafter bear interest, at a rate that is 2% above the prime lending rate each year until paid. The operator may remit semiannually to a person entitled to royalties the aggregate of 6 months' royalties whenever the aggregate amount is less than \$50.

(3) A royalty owner seeking cancellation of a lease for failure to make payments under the lease or seeking such payments under this section shall bring his action in the district court for the county in which the oil or gas well is located, and that court has jurisdiction over any such actions brought under this section. The prevailing party in any proceeding brought under this section is entitled to recover his court costs and reasonable attorney fees.

(4) This section does not apply if a royalty owner or his assignee has elected to take his proportionate share of production in kind or whenever there is a dispute as to the title of the minerals, the outcome of which would affect distribution of royalty payments.

Section 2. Section 82-10-102, MCA, is amended to read:

"82-10-102. Remedy not exclusive. The remedy herein provided for in ~~82-10-101~~ is in the nature of a special remedy additional to and not a substitute for other remedies

1 given by law to owners of royalties in lands of the
2 character specified, and all acts or parts of acts in
3 conflict with the provisions of ~~this--part 82-10-101~~ shall
4 not apply in actions authorized and provided for by ~~this~~
5 ~~part that section.~~"

6 NEW SECTION. Section 3. Codification instruction.
7 Section 1 is intended to be codified as an integral part of
8 Title 82, chapter 10, part 1.

-End-

STATUS SHEET

HOUSE NATURAL RESOURCES COMMITTEE

Page 4

48 Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 373	Reestablishes the Board of Water Well Contractors; establishes rules on the disclosure of water well construction	1/19	Marks	2/7	AND AS AMENDED DO PASS	2/16
HB 391	Requires that if the Board of Land Comm. adopts rules to establish the market value of surface licenses and leases it adopt a method of valuation, etc.	1/19	Stobie	2/2	AND AS AMENDED DO PASS	2/9
HB 436	Removes the confidentiality of reports of stratigraphic test wells filed with the Board of Oil and Gas Conservation	1/21	Harp	1/28	AND AS AMENDED DO PASS	1/28
HB 472	Generally revises the hard-rock mining impact laws	1/26	D. Brown	2/4	AND AS AMENDED DO PASS	2/9
HB 615	Authorizes State Lands to waive civil penalties for minor violations of the Montana Strip and Underground Mine Siting Act and requires the Board, etc.	2/2	Holliday	2/7	AND AS AMENDED DO PASS STATEMENT OF INTENT	2/7
HB 616	Provides that the obligation to make payments to royalty owners is of the essence in oil and gas leases; requires interest to be paid; etc.	2/2	Holliday	2/7	AND AS AMENDED DO PASS	2/7

HOUSE NATURAL RESOURCES COMMITTEE MINUTES
February 7, 1983

The House Natural Resources Committee convened at 12:30 p.m., on February 7, 1983, in Room 224K of the State Capitol, with Chairman Harper presiding and all members present except Rep. Neuman, who was excused, and Rep. Nordtvedt, who was absent. Chairman Harper opened the meeting to a hearing on House Bill 373.

HOUSE BILL 373

REPRESENTATIVE ROBERT MARKS, District 80, chief sponsor, said he was sponsoring the bill for the Board of Water Well Contractors. It is to allow them to be unsunsetted. He suggested an amendment in the title, following "contractors" on line 6 through "therefore" on line 8. He said this is just extraneous language. He said the bill would reinstate the board and put them back into operation until July 1, 1989 when they would again be up for sunset. He said a few changes from the present law is one that would leave the fee to be charged up to the board instead of setting it by statute, increasing the bond from \$1000 to \$4000, and having a reciprocity agreement with other states that have similar requirements for their licensees.

WILLIAM R. MORSE, representing the State of Montana Water Well Drillers Association, spoke in support of the bill in its present form. He said they had just had an annual convention in Billings and this bill received a unanimous vote of support. He said one minor change they would suggest in the bill was to change from six months to three months the time an applicant must wait to retake an examination he had failed. He also said they wished to have the Board stay with the Licensing Bureau under the Department of Commerce rather than moved to the Department of Natural Resources. He said this board is totally self supporting. He said they have a budget of \$12,000 to \$14,000 a year and the members are willing to increase their dues if need be to engage an inspector to have in the field. He said the proposed change in the collection of fees is to give them a little elasticity in case more income is needed. He said this is much more reasonable than the state could do if they were to take on approximately the same job.

WES LINDSAY, President of the Water Well Board, said he was highly in favor of the bill in its present form which leaves the Board with the Department of Commerce. He said the Board was started in 1962 and has been in operation for twenty years at no cost to the taxpayer. He said the responsibility of the Board is to protect the underground water system by checking on well construction and protecting the people from fraudulent dealers by inspection and bonding. He felt there isn't any board that is run more efficiently and at a cost of \$12,000 to \$14,000 a year.

DENNIS HEMMER, Department of State Lands, spoke next in support, and a copy of his testimony is Exhibit 2.

JAMES D. MOCKLER, Montana Coal Council, spoke in support.

KENNETH WILLIAMS, Western Energy Company, spoke next in support. A copy of his testimony is Exhibit 3 of the minutes.

TIM STEARNS, Northern Plains Resource Council, spoke next in support. He said this was a fine opportunity for them to testify on the same side as the coal industry. He said they are concerned about the major problems and not the minor ones. He said they favor giving the department more flexibility. He said they would like to know how the rule making will establish the difference between a major and a minor violation.

There were no opponents.

REPRESENTATIVE HOLLIDAY closed.

Questions were asked by the committee.

Rep. Bertelsen asked if there was a time frame for making rules to define a major and a minor violation. Mr. Hemmer said until October 1. He said the distinction between the two would be based on harm to the environment, public safety and negligence on the part of the operator.

Rep. McBride asked if it were the intent that the department will make the distinction in the rules and say specifically these are minor violations that could be waived. Mr. Hemmer said they would have a system for evaluating. He said the federal government uses a point system which he didn't know if they would adopt or not.

Rep. McBride asked if this would mean the same violation would be treated uniformly for all. Mr. Hemmer said that is why rules will be laid out as there could be circumstances when a violation might be minor but you may need to go ahead and have the penalty.

Chairman Harper closed the hearing on this bill and opened the meeting to a hearing on HB 616.

HOUSE BILL 616

REPRESENTATIVE GAY HOLLIDAY, District 46, chief sponsor, said this is a bill to improve the legal position of lessees in oil and gas leases. It will incorporate a provision to assess a

penalty for delinquent payments. The only recourse for delinquent payments now is through the courts. She said Mr. Hemmer has some suggested amendments and she would support those amendments.

DENNIS HEMMER, Department of State Lands, spoke in support of the bill. A copy of his testimony is Exhibit 4 and Exhibit 5 is a copy of the suggested amendments.

MIKE STEPHEN, Montana Association of Counties, said this bill would be beneficial and would assist the court situation. He said many eastern counties are recipients of oil royalties.

TERRY MURPHY, Montana Farmers Union and Farm Bureau, said they support the bill and he was also speaking for PAT UNDERWOOD of the Farm Bureau.

REPRESENTATIVE GAY HOLLIDAY closed.

There were no questions from the committee.

Chairman Harper closed the hearing on this bill and as the sponsor of HB 630 was not present, he opened the meeting to executive action on the following bills.

EXECUTIVE SESSION

HOUSE BILL 616 Rep. Jensen moved the amendments suggested by the Department of State Lands. This motion carried unanimously with those present (absent were Reps. Neuman and Nordtvedt). Rep. Jensen then moved that the bill AS AMENDED DO PASS. This motion carried unanimously with those present (same absent).

HOUSE BILL 615 Rep. Metcalf moved the bill be amended to include a July 1 effective date. This motion carried unanimously with those present (same absent). Rep. Mueller moved the bill AS AMENDED DO PASS and this motion carried unanimously with those present (same absent). Rep. Quilici moved that the statement of intent be adopted. This motion also carried unanimously with those present.

HOUSE BILL 373 Rep. Iverson moved DO PASS. Rep. McBride said there is another bill dealing with this and she requested this bill be held until the other bill was heard. She said the other bill was requested by the audit committee and would place the licensing under the Department of Natural Resources and it would be a DNRC advisory board.

Rep. McBride said she agreed directly involved people should be involved with their industry yet sometimes these occupational boards have become protectors of their own industry first and the protection of the public interest comes second. She said she felt there should be a single occupational bill saying we want our industry run the way the legislature wants. She said

TO: HOUSE NATURAL RESOURCES COMMITTEE

FROM: JOHN CARTER

RE: HOUSE BILLS 373, 615, 616, 630

DATE: February 7, 1983

HB 373
Marks

This bill seeks to reestablish the Board of Water Well Contractors for a period of six years. The Board is presently scheduled to terminate on July 1, 1983. The bill would also make the following changes in the laws regulating water well drilling:

- eliminate the set fees charged for issuance and renewal of water well licenses - fees would be set by the Board;
- increase the bonding requirement for licensees from \$1,000 to \$4,000;
- give discretion to the Board to require persons bringing complaints against licensees to do so in person - presently such persons must appear before the Board; and
- add a reciprocity provision that entitles well contractors licensed in other states to obtain a Montana license without satisfying examination and apprenticeship requirements.

HB 615
Holliday

This bill seeks to authorize the Department of State Lands to waive civil penalties for minor violations of the Strip and Underground Mine Siting Act. A waiver, however, could only be granted if the violation does not pose potential harm to public health, public safety, or the environment.

HB 616
Holliday

This bill seeks to improve the legal position of lessees in oil and gas leases. Specifically the bill would:

- make royalty payments under oil and gas lease "of the essence";
- require lessors to pay interest on unpaid royalties in certain cases;
- authorize a royalty owner to bring an action for cancellation of lease for nonpayment of royalties; and
- provides for an award of attorney fees if the royalty ~~action~~ ^{owner} prevails in an action to cancel a lease.

HB 630
Donaldson

This bill seeks to authorize ^{political} ~~potential~~ subdivisions of the state to adopt land use regulations for the management of flood plains within deregulated sheetflood areas.

VISITOR'S REGISTER

HOUSE NATURAL RESOURCES

COMMITTEE

BILL HB 616

DATE 2/7

SPONSOR HOLLIDAY

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

WITNESS STATEMENT

Name Dennis Hemmer Committee On Natural Resources
Address Helena Date 2-7-83
Representing Dept of State lands Support ☒
Bill No. 616 Oppose _____
Amend ☒

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1.

2.

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

DEPARTMENT OF STATE LANDS TESTIMONY ON HOUSE BILL 616
BEFORE THE HOUSE NATURAL RESOURCES COMMITTEE

The Department of State Lands supports House Bill 616. This bill would give the Department added leverage in getting timely payments for oil and gas royalties, a significant part of the income to the state school trust.

The Department would however suggest the bill be amended. While in fairness to the producer, the provision that interest not be assessed until after the division order is signed, it is not clear if interest would be paid on subsequent late royalty payments. A proposed amendment is attached which would make it clear that interest would be paid on all late royalty payments.

In recent times the prime rate has vascillated at frequent intervals. The Department suggests that it be specified that interest be 2% over prime rate on the date due. A suggested amendment is attached.

The Department urges the committee to adopt the amendments and vote in favor of passage of this bill.

Ex. 5

AMENDMENTS TO HOUSE BILL 616

INTRODUCED BILL

1. Page 2, line 2
Following: "to pay"
Insert: "initial"
2. Page 2, line 6
Following: line 5
Insert: "on the date due"
3. Page 2, line 9
Following: line 8
Insert: (3) Following initial payment of royalties, if the operator under an oil and gas lease fails to pay oil or gas royalties to the royalty owner or his assignee within 90 days following the time for such payments as prescribed under the terms of the lease, the unpaid royalties thereafter bear interest at a rate that is 2% above the prime lending rate on the date due until paid. The operator may remit semi-annually to a person entitled to royalties the aggregate of 6 months royalties whenever the aggregate amount is less than \$50.
4. Renumber: all subsequent subsections

STANDING COMMITTEE REPORT

February 7,

1933

SPEAKER:

MR.

NATURAL RESOURCES

We, your committee on

having had under consideration HOUSE Bill No. 616

First reading copy (white)
color

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT THE OBLIGATION TO MAKE PAYMENTS TO ROYALTY OWNERS IS OF THE ESSENCE IN OIL AND GAS LEASES; REQUIRING OIL AND GAS PRODUCERS TO PAY INTEREST ON ANY UNPAID ROYALTIES; REQUIRING A ROYALTY OWNER TO BRING ANY ACTION TO CANCEL A LEASE OR COLLECT PAYMENTS IN THE DISTRICT COURT OF THE COUNTY IN WHICH THE WELL IS LOCATED, AND PROVIDING FOR COURT COSTS AND ATTORNEY FEES IN ANY SUCH ACTION; AMENDING SECTION 82-18-102, MCA."

HOUSE

616

Respectfully report as follows: That Bill No.
be amended as follows:

1. Page 2, line 2.

Following: "to pay"

Insert: "initial"

2. Page 2, line 5.

Following: "rate"

Insert: "on the date due"

3. Page 2.

Following: line 8

Insert: "(3) Following initial payment of royalties, if the operator under an oil and gas lease fails to pay oil or gas royalties to the royalty owner or his assignee within 90 days following the time for such payments as prescribed under the terms of the lease, the unpaid royalties there-
after bear interest at a rate that is 2% above the prime lending rate on the date due until paid. The operator may remit semiannually to a person entitled to royalties the aggregate of 6 months royalties whenever the aggregate amount is less than \$50.

XXXXXRemember: all subsequent subsections

AND AS AMENDED

DO PASS

HAL HARPER

Chairman.

COMMITTEE ON Senate Judiciary

BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CON- CURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CON- CURRED IN DATE
616	2-14-83	3-8-83	3-8-83					3-8-83	
617	3-1-83	3-17-83	3-17-83				3-17-83		
618	2-16-83	3-18-83	3-19-83				3-19-83		
619	2-16-83	3-10-83	3-10-83				3-10-83		
628	2-16-83	3-7-83	TABLED						
629	2-14-83	3-17-83	3-17-83				3-17-83		
642	2-17-83	3-8-83	3-10-83					3-10-83	
660	2-18-83	3-9-83	3-14-83					3-14-83	
662	3-16-83	3-18-83	3-22-83					3-22-83	
677	3-2-83	3-21-83	3-21-83				3-21-83		
678	3-2-83	3-18-83	3-19-83				3-19-83		
684	2-18-83	3-23-83	3-23-83				3-23-83		
705	3-1-83	3-16-83	3-19-83					3-22-83	
714	3-24-83	3-25-83	3-25-83					3-25-83	
731	3-1-83	3-21-83	3-21-83				3-21-83		
741	3-1-83	3-16-83	3-16-83				3-16-83		

Use a separate sheet for Senate, House Bills, and Resolutions.

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 8, 1983

The thirty-seventh meeting of the Senate Judiciary Committee was called to order by Chairman Jean A. Turnage on March 8, 1983 at 10:04 a.m. in Room 325, State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF HOUSE BILL 502: Representative Pavlovich advised that he was sponsoring this bill at the request of the Public Service Commission. He then introduced Eileen Shore who would present the bill.

PROPONENTS: Eileen Shore, an attorney for the Public Service Commission, stated that this bill deals with the judicial review provisions of the Public Utility Act. Under the provisions of this bill automatic transmission of additional evidence would be eliminated. If new evidence is admitted the commission would have 30 days in which to report back to the court on what the commission decided, rather than 10 days as now required. She urged the Committee to give the bill favorable consideration.

Gene Phillips, representing Pacific Power and Light testified in favor of the bill.

Perry Weidler, representing the Montana-Dakota Utilities Company also voiced his support for HB502.

There being no further proponents, no opponents, and no question from the Committee, Representative Pavlovich closed by advising the Committee that Senator Stimatz would carry the bill if it receives a do pass recommendation.

CONSIDERATION OF HOUSE BILL 616: Representative Holliday, sponsor advised that this bill will require timely payments of royalties to royalty owners by oil and gas producers and require interest on any unpaid royalties. In the past the only remedy available to royalty owners for payment was to pursue the matter through district court. HB616 would provide the royalty owners with more protection to assure payments.

PROPONENTS: Senator Tveit testified in favor of the bill and distributed an amendment which was proposed by the Mineral Owners Association (see attached Exhibit "A"). He reviewed the reason for the amendment and advised that the bill was modeled after the North Dakota statute.

Don Allen, representing the Rocky Mountain Oil and Gas Association spoke as a proponent and apologized for not proposing the amendment.

in the House. He advised that the attorney responses to the bill were not available before the House heard it. His Association's main concern was with the oil and gas companies who delay paying royalties and he felt HB616 would be an effective way to alleviate this problem.

Jerome Anderson, representing Shell Oil Company, worked with the authors who drafted HB616 as well as the mineral owners and oil and gas companies. He urged the passage of the bill and the amendments as it will give greater protection to royalty owners.

Pat Underwood, representing the Montana Farm Bureau Federation, advised that he supported the bill.

There being no further proponents, and no opponents, the hearing was opened to questions from the Committee.

Senator Mazurek asked Jerome Anderson if cancellation of the lease would be an appropriate remedy. He was advised that this would be appropriate for a material breach of the lease, but they did not want to encourage cancelling the lease and losing the well.

Senator Halligan asked Senator Tveit if "ON THE DATE DUE" referred to the date the product is marketable. He was advised that this refers to the due date in the lease.

Senator Mazurek questioned if there would be an objection to inserting the language on page 2, lines 15-17 in place of the language on page 2, lines 5-7. He felt this language would be clearer. There was no objection as this would not change the meaning.

Senator Shaw asked Representative Holliday if the bill would be better with the proposed amendment. She acknowledged that it would.

There being no further questions, the hearing was closed.

CONSIDERATION OF HOUSE BILL 234: Chip Erdmann, representing the Montana School Board Association, presented the bill in the temporary absence of the sponsor, Representative Yardley. He advised that a two-thirds vote of both Houses is required for the passage of this bill. HB234 would exempt school board trustees from individual liability for exemplary and punitive damages when they are acting in their official capacity. They currently have no protection. He also stated that an essential reason for granting the board members immunity from liability is that their decisions could be influenced if they are faced with the possibility of being sued for their decisions. Essentially, HB234 would make the board members' liability more reasonable. (See written statement, Exhibit "B").

Senate Judiciary Committee
March 8, 1983
Page 5

ACTION ON HOUSE BILL 234: Senator Shaw moved HB234 BE CONCURRENT IN. The Committee discussed their interpretation of "official capacity." It was their consensus that official capacity is well enough defined and Senator Crippen pointed out that whether a person is acting in his official "capacity" is a fact issue for the court to decide. Senator Mazurek was still concerned with the interpretation of "official capacity" and felt it should be more specifically defined. A vote was taken on the motion and it carried with Senators Halligan, Brown and Mazurek voting in opposition. The Committee further discussed amending the bill on second reading to include "acting at a school board meeting." Senator Mazurek will suggest this to the sponsor.

ACTION ON HOUSE BILL 502: Senator Crippen moved HB502 BE CONCURRENT IN. This motion carried unanimously.

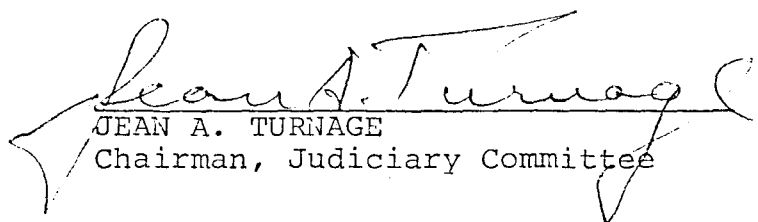
ACTION ON HOUSE BILL 616: Senator Galt moved to adopt the amendments proposed by Senator Tveit (see attached Exhibit "A"). This motion carried unanimously. Senator Crippen moved that AS AMENDED HB616 BE CONCURRENT IN. This motion also carried unanimously. It was agreed that Senator Tveit would carry the bill on the floor.

ACTION ON HOUSE BILL 575: The Committee felt there was a problem with respect to the amendment. Once the workermans' compensation carrier accepts a claim medical benefits are paid directly to the hospital. It was agreed that major revisions would be required in order for HB575 to accomplish what its sponsors intended. Senator Mazurek moved to TABLE HB575. This motion carried unanimously.

ACTION ON HOUSE BILL 628: Senator Daniels moved to TABLE HB628 as it would encourage too many law suits. This motion carried with Senator Mazurek voting in opposition.

The Committee agreed that there is merit to requiring written notice to the patient of his rights, and that perhaps something could be done which would speak to this issue.

ADJOURN: There being no further business before the Committee, the meeting was adjourned at 11:35.


JEAN A. TURNAGE
Chairman, Judiciary Committee

JUDICIARY COMMITTEE

Date 3-1

21

EXHIBIT "A"
March 8, 1983

AMENDMENTS TO HOUSE BILL 616

1. Title, line 9.
Strike: "TO CANCEL A LEASE OR"
Insert: "SEEKING A REMEDY OR TO"
2. Page 1, line 17.
Strike: " -- remedy for breach"
3. Page 1, lines 23 through 25.
Following: "contract."
Strike: the remainder of line 23 and lines 24 and 25 in their entirety
4. Page 2, line 1.
Strike: line 1 in its entirety
5. Page 2, line 3.
Strike: "INITIAL"
6. Page 2, line 4.
Strike: "90"
Insert: "180"
7. Page 2, lines 4 and 5.
Strike: "receipt of a signed royalty division order"
Insert: "oil or gas produced under the lease is marketed"
8. Page 2, lines 11 through 20.
Strike: subsection (3) in its entirety
Re-number: subsequent subsections accordingly
9. Page 2, line 21.
Strike: "cancellation of a lease"
Insert: "a remedy"
10. Page 3, line 7.
Following: "minerals"
Insert: "or entitlement to royalties"

March 8, 1983

SENATE STANDING COMMITTEE REPORT
(Judiciary)

That House Bill No. 616 be amended as follows:

Title, line 9.

Strike: "TO CANCEL A LEASE OR"

Insert: "SEEKING A REMEDY OR TO"

Page 1, line 17.

Strike: "-- remedy for breach"

Page 1, lines 23 through 25.

Following: "contract."

Strike: the remainder of line 23 through "cancellation." on
page 2, line 1.

Page 2, line 3.

Strike: "INITIAL"

Page 2, line 4.

Strike: "90"

Insert: "180"

Page 2, lines 4 and 5.

Strike: "receipt of a signed royalty division order"

Insert: "oil or gas produced under the lease is marketed"

Page 2, line 11.

Strike: subsection (3) in its entirety

Renumber: subsequent subsections.

Page 2, line 21.

Strike: "cancellation of a lease"

Insert: "a remedy"

Page 3, line 7.

Following: "minerals"

Insert: "or entitlement to royalties"

STANDING COMMITTEE REPORT

March 8

19 33

PRESIDENT

MR.

Judiciary

We, your committee on

House

Bill No. 616

having had under consideration

Holliday (Tveit)

Respectfully report as follows: That House Bill No. 616

third reading bill, be amended as follows:

1. Title, line 9.

Strike: "TO CANCEL A LEASE OR"

Insert: "SEEKING A REMEDY OR TO"

2. Page 1, line 17.

Strike: " -- remedy for breach"

3. Page 1, lines 23 through 25.

Following: "contract."

Strike: "the remainder of line 23 through "cancellation." on
page 2, line 1.

Continued on Page 2

And, as so amended,

BE CONCURRED IN

~~DO PASS~~

4/16
21

4. Page 2, line 3.
Strike: "INITIAL"
5. Page 2, line 4.
Strike: "90"
Insert: "180"
6. Page 2, lines 4 and 5.
Strike: "receipt of a signed royalty division order"
Insert: "oil or gas produced under the lease is marketed"
7. Page 2, line 11.
Strike: subsection (3) in its entirety
Renumber: subsequent subsections.
8. Page 2, line 21.
Strike: "cancellation of a lease"
Insert: "a remedy"
9. Page 3, line 7.
Following: "minerals"
Insert: "or entitlement to royalties"

And, as so amended,

BE CONCURRED IN

March 11, 1983

SENATE COMMITTEE OF THE WHOLE AMENDMENT

That House Bill No. 616 be amended as follows:

1. Page 2, line 6.

Following: "at"

Strike: "remainder of line 6 through "year" on line 7

Insert: "the maximum rate of interest authorized under
31-1-107 from the date due"

HOUSE BILL NO. 616

INTRODUCED BY HOLLIDAY, ABRAMS, SPAETH,

KEATING, ASAY, HANSON

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT THE OBLIGATION TO MAKE PAYMENTS TO ROYALTY OWNERS IS OF THE ESSENCE IN OIL AND GAS LEASES; REQUIRING OIL AND GAS PRODUCERS TO PAY INTEREST ON ANY UNPAID ROYALTIES; REQUIRING A ROYALTY OWNER TO BRING ANY ACTION TO CANCEL A LEASE OR SEEKING A REMEDY OR TO COLLECT PAYMENTS IN THE DISTRICT COURT OF THE COUNTY IN WHICH THE WELL IS LOCATED, AND PROVIDING FOR COURT COSTS AND ATTORNEY FEES IN ANY SUCH ACTION; AMENDING SECTION 82-10-102, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Obligation to pay royalties ---remedy-for-breach. (1) The obligation arising under an oil and gas lease to pay oil or gas royalties to the royalty owner or his assignee, to deliver oil or gas to a purchaser to the credit of such royalty owner or his assignee, or to pay a portion of the proceeds of the sale of such oil or gas to the royalty owner or his assignee is of the essence in the lease contract. Breach-of-such-obligation-constitutes grounds-for-the-cancellation-of-such-lease-in-cases-in-which it-is-determined-by-the-court-that-the-equities-of-the-case

require-cancellation

(2) If the operator under an oil and gas lease fails to pay ~~initial~~ oil or gas royalties to the royalty owner or his assignee within 90 ~~180~~ days after receipt--of-a--signed royalty--division--order OIL OR GAS PRODUCED UNDER THE LEASE IS MARKED, the unpaid royalties thereafter bear interest, at a rate ~~ON THE DATE DUE~~ that-is-2%--above-the-prime-lending rate--each-year THE MAXIMUM RATE OF INTEREST AUTHORIZED UNDER 31-1-107 FROM THE DATE DUE until paid. The operator may remit semiannually to a person entitled to royalties the aggregate of 6 months' royalties whenever the aggregate amount is less than \$50.

~~(2) FOLLOWING INITIAL PAYMENT OF ROYALTIES, IF THE OPERATOR UNDER AN OIL AND GAS LEASE FAILS TO PAY OIL OR GAS ROYALTIES TO THE ROYALTY OWNER OR HIS ASSIGNEE WITHIN 90 DAYS FOLLOWING THE TIME FOR SUCH PAYMENTS AS PRESCRIBED UNDER THE TERMS OF THE LEASE, THE UNPAID ROYALTIES THEREAFTER BEAR INTEREST AT A RATE THAT IS 2% ABOVE THE PRIME LENDING RATE ON THE DATE DUE UNTIL PAID, THE OPERATOR MAY REMIT SEMIANNUALLY TO A PERSON ENTITLED TO ROYALTIES THE AGGREGATE OF 6 MONTHS' ROYALTIES WHENEVER THE AGGREGATE AMOUNT IS LESS THAN \$50.~~

~~(3) (1) A royalty owner seeking cancellation--of--a lease A REMEDY for failure to make payments under the lease or seeking such payments under this section shall bring his~~

1 action in the district court for the county in which the oil
 2 or gas well is located, and that court has jurisdiction over
 3 any such actions brought under this section. The prevailing
 4 party in any proceeding brought under this section is
 5 entitled to recover his court costs and reasonable attorney
 6 fees.

7 ~~†††52141~~ This section does not apply if a royalty
 8 owner or his assignee has elected to take his proportionate
 9 share of production in kind or whenever there is a dispute
 10 as to the title of the minerals OR ENTITLEMENT TO ROYALTIES,
 11 the outcome of which would affect distribution of royalty
 12 payments.

13 Section 2. Section 82-10-102, MCA, is amended to read:

14 "82-10-102. Remedy not exclusive. The remedy herein
 15 provided for in 82-10-101 is in the nature of a special
 16 remedy additional to and not a substitute for other remedies
 17 given by law to owners of royalties in lands of the
 18 character specified, and all acts or parts of acts in
 19 conflict with the provisions of ~~this part~~ 82-10-101 shall
 20 not apply in actions authorized and provided for by ~~this~~
 21 ~~part that section.~~"

22 NEW SECTION. Section 3. Codification instruction.

23 Section 1 is intended to be codified as an integral part of
 24 Title 82, chapter 10, part 1.

-End-